

## REMARKS

Claims 1-29 and 55-88 are withdrawn. Claims 30-54 remain pending. No new matter has been added.

### Claim Rejections - 35 U.S.C. §112

#### Claims 30-54

The present Office Action states that Claims 30-54 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Specifically, the present Office Action states, “[t]he independent claims recite controlling a data output path by diverting a commonly used data pathway to a controlled data pathway. The term “common” is unclear, and therefore indefinite.”

Applicants respectfully disagree. Applicants respectfully submit that Independent Claims 30 and 42 include the feature “said usage compliance mechanism controlling a data output path by diverting a commonly used data pathway of a *media content provider* application to a controlled data pathway monitored by said compliance mechanism” (emphasis added). Support for the Claimed feature can be found throughout the Figures and Specification including, but not limited to, Figures 3 and 5A-5C and page 21 lines 14-22 of the Specification.

Furthermore, it is recognized that an Applicant can be his or her own lexicographer, as long as the meaning of a term is not repugnant to the usual meaning of the term. Moreover, if extrinsic reference sources evidence more than one definition for the term, the intrinsic record (e.g., the disclosure of the instant application) must be consulted to identify which of the different possible definitions is most consistent with Applicants’ use of the term – where there are several common meanings for a claim term, the patent disclosure serves to point away from the improper meanings and toward the proper meanings.

It is respectfully submitted that “commonly used data pathway of a media content provider” has an ordinary meaning in the art, and that meaning is consistent with the meaning provided by Figures 3 and 5A-5C and page 21 lines 14-22 of the Specification of the instant application.

Thus, Applicant respectfully submits the “commonly used data pathway of a media content provider” words of the claim are clearly defined in the Specification and the Figures must be given their plain meaning. In other words, they must be read as they would be interpreted by those of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 218 USPQ 385 (Fed. Cir. 1983).

For this reason, Applicants respectfully submit that the rejection of Claims 30-54 under 35 U.S.C. § 112, second paragraph, is improper and should be withdrawn.

#### Claim Rejections - 35 U.S.C. §103(a)

##### Claims 30-31, 33-37, 39-43, 45-50, 52 and 54

The present office action states that Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya et al. (20010056404) hereinafter “Kuriya”, in view of Leoutsarakos (20040039905) hereinafter “Leo” and further in view of Peinado et al. (20020007456) hereinafter “Peinado”. Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 30-31, 33-37, 39-43, 45-50, 52 and 54 are not taught or rendered obvious by Kuriya either alone or in combination with Leo and further in view of Peinado for the following reasons.

Applicants respectfully state that Independent Claims 30 and 42 include the feature “said usage compliance mechanism controlling a data output path by **diverting** a commonly used data pathway of a media content provider application to **a controlled data pathway** monitored by said compliance mechanism.” Support for the Claimed feature can be found throughout the Figures and Specification including, but not limited to, Figures 3 and 5A-5C and page 21 lines 14-22 of the Specification.

**To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the cited art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). (MPEP 2143.03).**

Applicants have reviewed Kuriya and do not understand Kuriya to teach the usage compliance mechanism controlling a data output path by diverting a commonly used data pathway of a media content provider application to a controlled data pathway monitored by the compliance mechanism (emphasis added).

Further, Applicants agree with the present Office Action statements on page 4 at lines 5-8, that Kuriya does not explicitly teach “determining which content sources of a plurality of content sources to provide delivery of said instance of media content, provided said client node is authorized to receive said instance of media content.”

Further, Applicants agree with the present Office Action statements on page 4 at lines 18 through page 5 line 12, that Kuriya and Leo do not teach, “activating a compliance mechanism in response to said client node receiving said instance of media content, said compliance mechanism coupled to said client node, said client node having a media content presentation application operable thereon and coupled to said compliance mechanism;

controlling a data path of a kernel-mode media device driver of said client node with said compliance mechanism upon detection of a kernel streaming mechanism operable on said client node, said compliance mechanism controlling a data output path by diverting a commonly used data pathway of said media content present application to a controlled data pathway monitored by said compliance mechanism; and

directing said media content from said kernel-mode media device driver to a media device driver coupled with said compliance mechanism, via said data path, for selectively restricting output of said media content.”

However, Applicants respectfully disagree with the statements in the present Office Action that it would be obvious to modify Kuriya to overcome these shortcomings. “[i]f the

proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious” (emphasis added; MPEP 2143.01(VI); *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)). Moreover, “[i]f the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed amendment” (emphasis added; MPEP 2143.01(V); *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)).

Further, a holding of obviousness can be based on a showing that there was "an apparent reason to combine the known elements in the fashion claimed." KSR, 127 S. Ct. at 1740-41, 82 USPQ2d at 1396. In other words, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, 127 S. Ct. at 1741, 82 USPQ2d at 1396 (quoting *In re Kahn*, 441 F.3d 977, 987, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)). However, this reasoning is not limited to the problem the patentee was trying to solve; "any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed," KSR, 127 S. Ct. at 1742, 82 USPQ2d at 1397.

In support of the combination, on page 5 lines 15-18, the Final Office Action states, “[A]t the time of the invention, it would have been obvious to one of ordinary skill in the art to combine the Kuriya reference with Leo. One of ordinary skill in the art would have been motivated to perform such an addition to be able to ensure security in an environment where data is shared between servers and plurality of clients. This is taught through Leo, such as in paragraphs 5-9. Also, Leo is relevant art, as it is directed toward security in data sharing environments” (emphasis added).

Applicants respectfully agree that Kuriya and Leo teach aspects of preventing unauthorized recording of media content in data sharing environments (emphasis added).

However, Applicants disagree with the assertions, on page 5 lines 21-25 of the present Office Action regarding the combination of Peinado with Kuriya and Leo. The Final Office

Action states, “[O]ne of ordinary skill in the art would have been motivated to perform such an addition to ensure a piece of content is not misused or used against the content owner’s wishes” (emphasis added).

Applicants disagree with the assertions of the present Office Action for at least the following rationale. Applicants contend that such disclosure would not be a proper basis for the combination since there is no argument that such functionality would benefit Kuriya alone or in combination with Leo. While Peinado may describe digital rights permissions, the Office Action has not shown how such information would have made the invention obvious to a person of ordinary skill in the art utilizing the teachings of Kuriya either alone or in combination.

Specifically, Applicants respectfully point out that both Kuriya and Leo teach preventing unauthorized recording of media content in data sharing environments which is significantly different than claimed by the present Application. Thus, modifying the teachings of Kuriya and or Leo, teachings that are directed toward preventing unauthorized recording of media content in data sharing environments, to preventing unauthorized recording related to a single device, as suggested by the Office Action is improper as the combination would change the method of operation of Kuriya and Leo. Further, the present Office Action provides no proper argument that the functionality would benefit the present operation of Kuriya or Leo either alone or in combination.

Applicants submit that the modifications as suggested in the present Office Action would require significant modification to the teachings of both Kuriya and Leo. Thus, Applicants respectfully submit that Kuriya and Leo are both well suited for their intended purpose and there is no disclosure within the present Office Action providing a proper basis for the combination since there is no argument that such functionality would benefit Kuriya or Leo as is.

For these reasons, Appellants respectfully submit that the combination of elements as suggested by the present Office Action is based on speculation and less than a preponderance of the evidence and thus, fails to provide sufficient reasons for finding Claims 30-31, 33-37, 39-43,

45-50, 52 and 54 unpatentable for obviousness under 35 U.S.C. § 103(a) over Kuriya in view of Leo and further in view of Peinado.

Regarding Peinado, Applicants respectfully submit that Peinado does not teach or render obvious the feature of “a usage compliance mechanism controlling a data output path by **diverting a commonly used data pathway** of a media content provider application to **a controlled data pathway** monitored by said compliance mechanism” as Claimed in Claims 30 and 42.

In contrast, Applicants understand Peinado to teach a device that determines and then authenticates the modules in the commonly used data pathway of a rendering Application (see Col. 33-34). In other words, Applicants do not understand Peinado to teach the diverting of data from an application’s commonly used data path, but instead, Applicants understand Peinado to determine the commonly used data path of the application and then authenticate the modules within the commonly used data path (emphasis added).

For example, Applicants understand Peinado to teach, in detail, a method for determining the modules in the commonly used data pathway. Therefore, Applicants respectfully submit if Peinado were teaching the diversion to a controlled data pathway, there would be no reason to determine the data path and the modules associated therewith, because that information would be known by Peinado.

For this further reason, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo and further in view of Peinado under 35 U.S.C. §103(a).

Additionally, Applicants understand Peinado to teach a number of methods for authenticating the modules once they are determined. Thus, Peinado cannot be understood to be teaching the diversion to a controlled data pathway, as there would be no reason to determine the data path and authenticate the modules associated therewith, as that information would be known.

As such, Applicants respectfully submit that Peinado teaches directly away from the feature of “usage compliance mechanism controlling a data output path by **diverting a commonly used data pathway** of a media content provider application to **a controlled data pathway** monitored by said compliance mechanism” as Claimed in Claims 30 and 42.

For this further reason, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo and further in view of Peinado under 35 U.S.C. §103(a).

Moreover, Applicants understand Peinado to teach scrambling content when it is to be output in naked form along the pathway. Thus, not only does Peinado teach determining the commonly used data pathway and authenticating the modules along the commonly used data pathway, but Applicants further understand Peinado to teach and render obvious adding scrambling to the data at the times when the commonly used data pathway outputs the naked content along the commonly used data pathway (emphasis added).

As such, Applicants respectfully point out that Peinado cannot be teaching the diversion of the common pathway to a controlled data pathway. Specifically, if Peinado were teaching the diversion to a controlled data pathway there would be **no reason to determine the data path, authenticate the modules associated therewith and add scrambling** to the commonly used pathway (emphasis added).

For this further reasoning, Applicants respectfully submit that Peinado teaches directly away from the feature of “usage compliance mechanism controlling a data output path by **diverting a commonly used data pathway** of a media content provider application to **a controlled data pathway** monitored by said compliance mechanism” as Claimed in Claims 30 and 42.

Thus, Applicants further submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo and further in view of Peinado under 35 U.S.C. §103(a).

As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Peinado. Furthermore, Applicants respectfully state that based on the above reasoning, neither Kuriya alone nor in combination with Leo and Peinado teaches or renders obvious the features of Claims 30 and 42. As such, Applicants respectfully submit that Claims 30 and 42 are not taught or rendered obvious by Kuriya in view of Leo and further in view of Peinado under 35 U.S.C. §103(a).

Regarding Claim 31, on the second paragraph of page 6, the present Office Action states, “[P]icking a content server close to the client unit would be obvious, as it teaches in paragraph 70 that someone skilled in the art will appreciate that better service can be provided if a connection is close rather than far.”

Applicants respectfully disagree with the well-known assertion. Specifically, Applicants point out that better service in a network is dependent on numerous factors such as: bandwidth, traffic, resources, support, etc. Thus, the present assertion that “closer is better” appears to be nothing more than hindsight based on the subject matter claimed.

Further, the “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

As such, Applicants respectfully request that the Office Action provide support in the form of evidence that “closer is better” or withdraw the rejection of record.



Regarding Claim 35, on the last paragraph of page 6, the present Office Action states, “[i]t is inherent that an address is changed if a media content is transferred. If the content is transferred to the client node (in this case, it is), the address of the content would be changed to the client node.”

Applicants respectfully disagree with the well-known assertion. Specifically, Applicants submit that an address change does not inherently follow the transfer of media content. In contrast, dead links as seen when utilizing any database, including the Internet, would suggest that transfer of media content can and does occur without updating the address. Thus, Applicants submit that the present assertion appears to be nothing more than hindsight based on the subject matter claimed.

Further, the “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

As such, Applicants respectfully request that the Office Action provide support in the form of evidence that “an address change is inherent if a media content is transferred” or withdraw the rejection of record.

With respect to Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 31, 33-37, 39-41, 43, 45-50, 52 and 54 are also allowable as pending from allowable base Claims.

Claims 32, 38, 44, 51 and 53

The present office action states that Claims 32, 38, 44, 51 and 53 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kuriya in view of Leo and further in view of Peinado. Applicants have reviewed the cited reference and respectfully submit that the embodiments of the present invention as recited in Claims 32, 38, 44, 51 and 53 are not taught or rendered obvious by Kuriya either alone or in combination with Leo and further in view of Peinado for the following reasons.

Applicants respectfully point out that in the previous responses, Applicants have specifically requested that evidence be provided in the Office Action to support the assertions of well-known in the Office Action. Applicants respectfully submit that such a request is well within the Applicants scope and that again, the request for supporting documentation has been ignored.

For this reason alone, Applicants respectfully submit that the rejection of Claims 32, 38, 44, 51 and 53 are improper as there have been no specific factual findings predicated on sound technical and scientific reasoning to support the rejections conclusions. Thus, the rejection of Claims 32, 38, 44, 51 and 53 does not provide a prima facie case of obviousness under 35 U.S.C. § 103(a) as established by the MPEP and the Federal Circuit.

Regarding Claim 32, Applicants respectfully submit that the Office Action has provided inadequate support of a finding of obviousness or inherency. The Office Action states that the features of Claim 32 are obvious if not inherent. Applicants respectfully submit that the claimed embodiments of determining which content source of said plurality of content source contains said instance of media content is not considered to be common knowledge or well-known in the art, as asserted by the Examiner.

As previously provided herein, Applicants submit that an address change does not inherently follow the transfer of media content. In contrast, dead links as seen when utilizing any database, including the Internet, would suggest that transfer of media content can and does

occur without updating the address. Thus, Applicants submit that the present assertion appears to be nothing more than hindsight based on the subject matter claimed.

The “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Applicants respectfully submit that the basis for obviousness as relied on by the Examiner is not set forth explicitly, as required. Applicants respectfully submit that the Examiner has not stated why the teachings are common knowledge. Applicants respectfully assert that the Examiner has taken a stand of obviousness without providing a clear and unmistakable technical line of reasoning, as required.

Applicants respectfully assert that the claimed features are not common knowledge. “It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based” (emphasis added; MPEP 2144.03(E); See *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)).

Accordingly, Applicants respectfully that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of obviousness or inherency, in accordance with 37 CFR § 1.104(d)(2).

Regarding Claim 38, Applicants respectfully submit that the Office Action has provided inadequate support of a finding of obviousness or inherency. The Office Action states that the features of Claim 38 are obvious. On page 10 lines 5-7, the Office Action states, “In general,

since more content is not protected compared to protected, it would be faster to make the default media driver the one without protection. By doing so, the system may be faster, as only selected documents are protected” (emphasis added).

Applicants respectfully submit that no evidence has been provided to support the statement “more content is not protected compared to protected”. In contrast, actions taken as related to DRM, laws generated by the United States Congress, Copyright laws and actions against companies such as Napster, would suggest that more media content is protected, but that the protection is being ignored. Thus, Applicants submit that the present assertion appears to be nothing more than improper hindsight used to best match the subject matter claimed.

The “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Accordingly, Applicants respectfully that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of obviousness or inherency, in accordance with 37 CFR § 1.104(d)(2).

Regarding Claim 53, Applicants respectfully submit that the Office Action has provided inadequate support of a finding of obviousness or inherency.

Further, Applicants respectfully disagree with the well-known assertion provided on page 10 at lines 19-22. Specifically, the present Office Action states, “Emulators implement specialized hardware devices into software onto pre-existing devices. By doing so, additional

hardware is not needed. Since no additional hardware is not [sp] needed, space is saved, and money can be saved as well.”

Applicants respectfully disagree with the assertion. Specifically, Applicants point out that Claim 53 is directed toward a media device emulating a media driver both of which are well defined in the Specification. Further, Applicants submit that media devices and media drivers in computer systems are almost always software. Thus, Applicants respectfully submit that an emulator for emulating a hardware device on pre-existing software is distinctly different than software emulating software. Thus, Applicants submit that the present assertion appears to be nothing more than improper hindsight used to best match the subject matter claimed.

Applicants submit that an address change does not inherently follow the transfer of media content. In contrast, dead links as seen when utilizing any database, including the Internet, would suggest that transfer of media content can and does occur without updating the address. Thus, Applicants submit that the present assertion appears to be nothing more than hindsight based on the subject matter claimed.

The “assessment of basic knowledge and common sense that is not based on any evidence in the record lacks substantial evidence support” (MPEP 2144.03(A); *In re Zurko*, 258 F.3d 1379, 1385, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001)). In particular, “[i]f such notice is taken, the basis for such reasoning must be set forth explicitly. The examiner must provide specific factual findings predicated on sound technical and scientific reasoning to support his or her conclusion of common knowledge” (MPEP 2144.03(B); see *In re Soli*, 317 F.2d 941, 946, 37 USPQ 797, 801 (CCPA 1963); see also *In re Chevenard*, 139 F.2d 711, 713, 60 USPQ 239, 241 (CCPA 1943)).

Applicants respectfully submit that the basis for obviousness as relied on by the Examiner is not set forth explicitly, as required. Applicants respectfully submit that the Examiner has not stated why the teachings are well known in the art. Applicants respectfully

assert that the Examiner has taken a stand of obviousness without providing a clear and unmistakable technical line of reasoning, as required.

Applicants respectfully assert that the claimed features are not common knowledge. “It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based” (emphasis added; MPEP 2144.03(E); See *In re Zurko*, 258 F.3d 1379, 1386, 59 USPQ2d 1693, 1697 (Fed. Cir. 2001); *In re Ahlert*, 424 F.2d 1088, 1092, 165 USPQ 418, 421 (CCPA 1970)).

Accordingly, Applicants respectfully that the Examiner provide adequate evidence in the form of an affidavit in support of the finding of obviousness or inherency, in accordance with 37 CFR § 1.104(d)(2).

Furthermore, Applicants respectfully state that Claims 32, 38, 44, 51 and 53 depend from the allowable Independent Claims 30 and 42 and recite further features of the present claimed invention. Therefore, Applicants respectfully state that Claims 32, 38, 44, 51 and 53 are also allowable as pending from allowable base Claims.

Conclusion

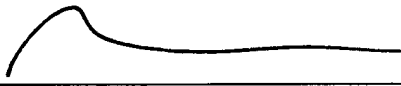
In light of the above-listed remarks, Applicant respectfully requests allowance of Claims 30-54.

The Examiner is urged to contact Applicant's undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

Date: 03/04/08



---

John P. Wagner, Jr.  
Reg. No. 35,398

WESTRIDGE BUSINESS PARK  
123 WESTRIDGE DRIVE  
WATSONVILLE, CALIFORNIA 95076  
(408) 377-0500